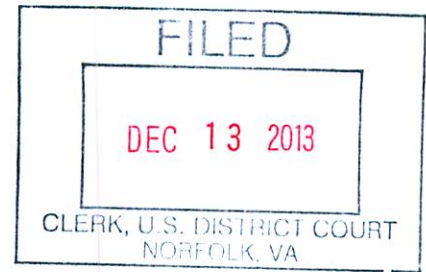


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



JOSEPH PAUL FLOOD, #1302026,

Petitioner,

v.

ACTION NO. 2:12cv652

HAROLD W. CLARKE,
Director,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, submitted a *pro se* petition pursuant to 28 U.S.C. § 2254. The Petition alleges a violation of federal rights pertaining to Petitioner's convictions of first degree murder and use of a firearm in the commission of a felony. As a result of these convictions on August 24 and 25, 2009, Petitioner was sentenced to serve life plus three years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for a Report and Recommendation. The Report and Recommendation, filed November 12, 2013, recommends that Respondent's motion to dismiss [ECF 8] be granted and that the petition for a writ of habeas corpus be denied.

On December 3, 2013, the Court received Petitioner's Notice of Appeal indicating Petitioner's wish to appeal the Report and Recommendation to the United States Court of Appeals.

ECF No. 14. As a final judgment has not been entered in this case, the Notice of Appeal was construed as Petitioner's objection to the Report and Recommendation.

Following a review of the record, the Court adopts and approves the findings and recommendations set forth in the Report and Recommendation filed November 12, 2013. Grounds (C), (E), and (F)(i) are DENIED because they were procedurally defaulted in state court and Petitioner has failed to show cause and prejudice excusing the default. Grounds (A)(1), (A)(2), (A)(3), (A)(4), (B), (D), (F)(ii), and (G) are DENIED because the state court's dismissal of Flood's ineffective assistance of counsel claims neither (1) "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law," nor (2) "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

Therefore, it is ORDERED that the Report and Recommendation filed November 12, 2013. (ECF No. 13) is ADOPTED, Respondent's Motion to Dismiss (ECF No. 8) is granted, and the petition for a writ of habeas corpus (ECF No. 1) is DENIED and DISMISSED. It is further ORDERED that Judgment be entered in favor of Respondent.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," and the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such Judgment.

The Clerk shall mail a copy of this Final Order to Petitioner Joseph Paul Flood and counsel of record for Respondent.



Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia
December 13th, 2013